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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARCHITECTURAL POLYMERS, INC.

1220 Little Gap Road
Palmerton, PA 18071

Plaintiff

- - - - -

No.

StructureTech New York, Inc.

500 7th Avenue, Floor 10B

New York, NY 10018

Defendant

COMPLAINT

PARTIES

1. Plaintiff is Architectural Polymers, Inc. ("AP"), a Pennsylvania corporation with a principal place of business at 1220 Little Gap Road, Palmerton, Carbon County, Pennsylvania, 18071.

2. Defendant is StructureTech New York, Inc. ("StructureTech"), a New York corporation with a principal place of business at 500 7th Avenue, Floor 10B, New York NY 10018.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action in accordance with 28 U.S.C §1332, in that there is diversity of citizenship between the Plaintiff and Defendant and the amount in controversy exceeds \$75,000.

4. Venue is proper in this District in accordance with 28 U.S.C. §1391(b) in that a substantial part of the events giving rise to the claim occurred in this District and because the parties agreed to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Pennsylvania.

FACTUAL BACKGROUND

5. AP is an industry leader in concrete form fabrication and provides forms used for pre-cast, tilt-up and cast-in-place construction projects. AP has developed a vast array of innovative methods that offer a superior solution to traditional brickwork and masonry and benefits the architectural community. Applications range from high quality concrete form liner molds for decorative concrete art on North America's highways to custom manufacturing thin brick inlay systems and other custom profiles to clad schools, hospitals, residential and commercial buildings, condominiums, and parking decks.

6. StructureTech is involved in the residential and commercial construction industries of New York and New Jersey and specializes in foundation, superstructure, masonry and curtainwall.

7. StructureTech was a subcontractor on a construction project in the Financial District located in Lower Manhattan, New York City, New York, commonly referred to as 130 William Street (also referred to herein as the “Project”). 130 William Street is a 66 story, 800 foot tall residential skyscraper that contains 242 units.

8. The exterior façade of 130 William Street consists of decorative cast in place concrete. Pictures of the exterior of 130 William Street that depict the façade of the building are attached hereto as Exhibit 1.

9. On July 27, 2021, AP provided StructureTech with a Sales Quotation to supply form liners to be used by StructureTech in furtherance for the work it was performing at the Project. A true and correct copy of the Sales Quotation is attached as Exhibit 2. The Sales Quotation includes both the cost of the form liners and the tooling fees and work required to create the molds for the form liners.

10. The Sales Quotation included and incorporated AP’s standard terms and conditions that were contained on its website. A true and correct copy of AP’s Terms and Conditions of Sale are attached as Exhibit 3.

11. On July 27, 2021, StructureTech accepted AP’s Sales Quotation along with AP’s Terms and Conditions of Sale and returned a signed copy to AP (hereinafter referred to at times as the “Contract” or “Order”).

12. AP prepared drawings depicting the form liners it was supplying to StructureTech for the Project. A true and correct copy of the drawings are attached as Exhibit 4.

13. StructureTech's authorized representative digitally included his initials on each of the drawings and returned them to AP, thereby accepting the drawings and approving them for use by AP in fabrication of the form liners. See First page of Exhibit 4 for email transmitting approved drawings and actual drawings showing at the top of each page that they were approved by "v.s.". (The initials of "v.s" are for Vaibhav Shah, a Project Manager for StructureTech).

14. Upon receipt of the signed Sales Quotation and signed drawings, AP promptly began working to perform under the parties' Contract and fulfill StructureTech's Order.

15. AP adjusted its production schedule to accommodate StructureTech's Order.

16. AP performed engineering necessary for the design of the form liners, procured materials to construct the form liners, and spent significant time creating molds for the form liners.

17. On August 9, 2021, StructureTech notified AP that it was canceling the Order. A true and correct copy of the email from StructureTech to AP dated August 9, 2021 canceling the Order is attached as Exhibit 5.

18. StructureTech did not accept any of the products ordered from AP and made no payment to AP for cancellation of the Order.

COUNT I – WRONGFUL NONACCEPTANCE AND REPUDIATION

19. Plaintiff incorporates herein by reference paragraphs 1 through 18 above as if set forth herein at length.

20. AP and StructureTech formed a valid and binding Contract whereby AP agreed to sell and StructureTech agreed to purchase certain form liners for the price of \$230,670.67. See Exhibit 2.

21. In accordance with the provisions of Section 5 of the Terms and Conditions of Sale: “Orders may not be cancelled under any circumstances except with Seller’s prior written approval.” See Exhibit 3.

22. AP never approved of StructureTech’s cancellation of the Order.

23. StructureTech unilaterally and without authorization cancelled the Order on August 9, 2021 when it put AP on notice that “we won’t be taking any form linear [sic] from you”

24. By its express terms, the Contract is governed by Pennsylvania law. See Exhibit 3 at Section 10 (“This Agreement shall be construed, interpreted and governed in accordance with the laws of the Commonwealth of Pennsylvania without regard for conflicts of law provisions.”).

25. StructureTech’s unauthorized cancellation of the Order amounts to a wrongful repudiation of the Contract under 13 Pa.C.S.A. §2703.

26. The appropriate measure of damages for StructureTech’s wrongful nonacceptance and repudiation are those set forth in 13 Pa.C.S.A. §2708(b). Specifically, AP is entitled to receive the “profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any

incidental damages provided in this division (section 2710), due allowance for costs reasonably incurred, and due credit for payments or proceeds of resale."

27. The damages to which AP is entitled to recover from StructureTech pursuant to 13 Pa.C.S.A. §2708(b) caused by and arising from StructureTech's wrongful nonacceptance and repudiation of the Contract are in excess of \$75,000.

28. Section 5 of the Terms and Conditions of Sale provides that StructureTech shall pay interest at the rate of 18 percent (18%) per annum on any unpaid balance until payment in full. See Exhibit 3.

29. In accordance with Section 5 of the Terms and Conditions of Sale, StructureTech is liable to AP for interest at the rate of 18 percent (18%) per annum on all amounts recoverable under 13 Pa.C.S.A. §2708(b).

30. Section 5 of the Terms and Conditions of Sale provides that StructureTech shall pay AP's cost of collection for delinquent accounts, including AP's court costs and reasonable attorneys' fees. See Exhibit 3.

31. In accordance with Section 5 of the Terms and Conditions of Sale, StructureTech is liable to AP for AP's cost of collection, including AP's court costs and reasonable attorneys' fees, for AP's pursuit of this claim for the amounts recoverable under 13 Pa.C.S.A. §2708(b).

WHEREFORE, Plaintiff Architectural Polymers, Inc. demands judgment in its favor and against Defendant StructureTech New York, Inc. for an amount in excess of \$75,000, together with attorneys' fees, expenses and costs.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By /s/ Jonathan H. Rudd

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Dated: October 28, 2022